

Assembly Bill No. 1715

Passed the Assembly May 19, 2003

Chief Clerk of the Assembly

Passed the Senate August 27, 2003

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 1281 of the Code of Civil Procedure, and to add Section 12952 to the Government Code, relating to employment arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, Committee on Judiciary. Employment arbitration agreements.

Existing law provides that written agreements to submit controversies to arbitration are valid and enforceable.

This bill would invalidate arbitration agreements between employers and employees that relate to employment practices covered by the Fair Employment and Housing Act (FEHA) that are required as a condition of employment or continued employment. It would further establish that on and after January 1, 2004, any waiver of rights or procedures under the FEHA must be knowing, voluntary, and not made as a condition of employment or continued employment. The bill also provides that an employer has the burden to prove that a waiver or arbitration agreement was knowing, voluntary, and not a condition of employment or continued employment.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that it is the public policy of the State of California to ensure that employees have the full benefit of the rights and procedures contained in the Fair Employment and Housing Act and that employees not be deprived of those rights or procedures by the use of coerced and involuntary waivers. It is the purpose of this act to ensure that any agreement between an employer and employee to waive any rights or procedures under the FEHA, including any agreement to arbitrate any claim arising under the FEHA, is a matter of voluntary consent and not coercion.

The Legislature finds and declares that involuntary arbitration provisions that limit an employee's access to the Department of Fair Employment and Housing or limit the authority of the department to investigate and pursue meritorious claims of



discrimination as a condition of employment or continued employment are against the public policy of this state.

SEC. 2. Section 1281 of the Code of Civil Procedure is amended to read:

1281. (a) Except as provided in subdivision (b), a written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable, and irrevocable, save upon grounds that exist for the revocation of any contract.

(b) Subdivision (a) does not apply to any arbitration agreement between an employer and employee that violates Section 12952 of the Government Code.

SEC. 3. Section 12952 is added to the Government Code, to read:

12952. (a) It is an unlawful employment practice, on or after January 1, 2004, for an employer subject to this part to require as a condition of employment or continued employment that an employee or potential employee waive any rights or procedures provided for in this part, including, but not limited to, the right to file a complaint with the department pursuant to Section 12960 or the right to file and pursue a civil action pursuant to Section 12965.

(b) It is an unlawful employment practice, on or after January 1, 2004, for an employer, as defined in subdivision (d) of Section 12926, to refuse to hire, harass, discharge, expel, or otherwise discriminate against an employee or potential employee because he or she refuses to waive rights or procedures provided for in this part.

(c) Any waiver of rights or procedures provided under the Fair Employment and Housing Act must be knowing, voluntary, and not made a condition of employment or continued employment.

Any such waiver, including an agreement to arbitrate a FEHA claim, that is required as a condition of employment or continued employment in violation of subdivision (a), shall be deemed involuntary, unconscionable, against public policy, and unenforceable.

(d) The employer has the burden of proving that any waiver of rights or procedures provided under the Fair Employment and Housing Act, including any agreement to arbitrate a claim under the FEHA, was knowing, voluntary, and not made a condition of employment or continued employment. This subdivision shall



apply to any agreement to waive any rights or procedures under the FEHA, including an agreement to arbitrate a FEHA claim that is entered into, altered, modified, renewed, or extended on or after January 1, 2004.



Approved _____, 2003

Governor

